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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,040	06/25/2003	Pierre-Stephane Dufourg	218728-000191	3933
28465	7590	05/31/2005	EXAMINER	
DLA PIPER RUDNICK GRAY CARY US LLP			CHAN, KO HUNG	
P. O. BOX 64807			ART UNIT	
CHICAGO, IL 60664-0807			PAPER NUMBER	
			3632	

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/606,040	Applicant(s) DUFOURG, PIERRE-STEPHANE	
	Examiner Korie H. Chan	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/10/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

Claims 1-3 stand rejected under 35 U.S.C. 102(b) as being anticipated by Hatch (US patent no.1,559,695). Hatch discloses conduit running longitudinally in a first direction and comprising at least one substantially U-shaped section that has a bottom (6) and two lateral flanges (4), wherein the U-shaped section has two open ends and having a length greater than the width, the conduit delimiting an interior volume capable of accommodating pipes lines running longitudinally the first direction, the conduit comprising rigid lengthwise wires (5) running substantially parallel to the first direction and rigid crosswise wires (4 and 6) running substantially at right angles to the first direction, the crosswise wires being fixed the lengthwise wires toward the interior volume of the conduit, and each crosswise wire comprising base portion belonging to the bottom of the conduit and two lateral branches belonging respectively to each lateral flange of the conduit, wherein at least the lengthwise wires belonging to the bottom of the conduit each comprise a succession of longitudinal portions (5) connected by bends (7) protruding away from the interior volume of the conduit, the bends the lengthwise wires being designed to accommodate the base portions of crosswise wires and being sized so that the base portions of the crosswise wires and the longitudinal portions of the lengthwise wires lie at substantially the same level; wherein the longitudinal portions of the lengthwise wires are straight and parallel to the first direction wherein the base portions of the crosswise wires and the longitudinal portions of the lengthwise wires are arranged substantially the same plane (page 1, lines 55-58).

Regarding applicant's amended claim of trunking to "cable conduit", Hatch's conduit is capable of support cable to constitute a cable conduit.

Claim Rejections - 35 USC § 103

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over in Simon (US patent no. 5,531,410) view of Hatch (US patent no. 1,559,695). Simon discloses a cable conduit running longitudinally in a first direction and comprising at least one substantially U-shaped section that has a bottom (70) and two lateral flanges (71) having open ends with length greater than its width, the conduit delimiting an interior volume capable of accommodating pipes lines running longitudinally the first direction, the conduit comprising rigid lengthwise wires (8) running substantially parallel to the first direction and rigid crosswise wires (70) running substantially at right angles to the first direction, the crosswise wires being fixed the lengthwise wires toward the interior volume of the conduit, and each crosswise wire comprising base portion (70) belonging to the bottom of the conduit and two lateral branches (71) belonging respectively to each lateral flange of the conduit. However, Simon does not disclose the bends of the lengthwise wires being designed to accommodate the base portions of crosswise wires and being sized so that the base portions of the crosswise wires and the longitudinal portions of the lengthwise wires lie at substantially the same level.

Making a level and planar surface on supports made of weaved wires via bends are conventional and well-known. It has the well-known advantage of providing a desired flat surface in a meshed wire supporting frame to simulate supports made of

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expensive flat panels or to eliminate tilting or obvious distortion of the article if mounted on irregular surface. Hatch demonstrate such desire to make meshed wire frames with flat support surface. Hatch teach such wire frame running longitudinally in a first direction and comprising at least one substantially U-shaped section that has a bottom (6) and two lateral flanges (4), the conduit delimiting an interior volume capable of accommodating pipes lines running longitudinally the first direction, the conduit comprising rigid lengthwise wires (5) running substantially parallel to the first direction and rigid crosswise wires (4 and 6) running substantially at right angles to the first direction, the crosswise wires being fixed the lengthwise wires toward the interior volume of the conduit, and each crosswise wire comprising base portion belonging to the bottom of the conduit and two lateral branches belonging respectively to each lateral flange of the conduit, wherein at least the lengthwise wires belonging to the bottom of the conduit each comprise a succession of longitudinal portions (5) connected by bends (7) protruding away from the interior volume of the conduit, the bends of the lengthwise wires being designed to accommodate the base portions of crosswise wires and being sized so that the base portions of the crosswise wires and the longitudinal portions of the lengthwise wires lie at substantially the same level; wherein the longitudinal portions of the lengthwise wires are straight and parallel to the first direction wherein the base portions of the crosswise wires and the longitudinal portions of the lengthwise wires are arranged substantially the same plane (page 1, lines 55-58) such that the items carry on the plane will rest on both the transverse and longitudinal bottom members so that

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there's no tendency for unwanted tilting of the item supported thereon (page 1, lines 70-76).

It would have been obvious to one of ordinary skill in the art to have modified the base of Simon by providing bends to the lengthwise wires to accommodate the base portions of crosswise wires and being sized so that the base portions of the crosswise wires and the longitudinal portions of the lengthwise wires lie at substantially the same level so that the items supported may lie flatly on both the transverse and longitudinal member as taught to be desirable by Hatch

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon (US patent no. 5,531,410) in view of Hatch (US patent no. 1,559,695) as applied to claim 1 above, and further in view of Yake (US patent no. 4,046,261). Simon and Hatch combined disclosed all the claimed features of applicant's invention except for the width of the bend is the same as or greater than two times the crosswise wire and that the bends each with a flat bottom. Yake teaches a bottom surface made of lengthwise and crosswise wires where the lengthwise has bends (where wire 4 and 9 rests) has flat bottom and having a bend width greater than twice the width of the crosswise wire (4 and 9, figure 3). It would have been obvious to one of ordinary skill in the art to have modify the bend of Simon and Hatch combined such that the bend has a flat bottom with a width greater than two times the crosswise wire as taught by Yake to facilitate stability. Furthermore, it would have been an obvious matter of design choice to provide the bend width the same as or greater than two times the crosswise wire since applicant fail to disclose the criticality to having a bend width of the same or greater than two

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times the width of the crosswise wire. Moreover, it appears other widths would perform as well.

Response to Arguments

Applicant's arguments filed 4/12/2005 have been fully considered but they are not persuasive. Applicant's again argues that the amended claims now recites "a cable conduit" is not shown by Hatch. Examiner respectfully disagrees. Applicant's so called "cable conduit" which is the same as "a conduit for cable" where cable is intended use. A conduit is defined as a channel through which something is conveyed. Hatch demonstrates such structure. Further, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The prior art of Hatch has a channel or conduit which is capable of supporting a cable to constitute a cable conduit.

Further, regarding the added limitation that the U-shaped section has open ends with length greater than width, Hatch does show a portion or section of his device having a U-shaped shape with opened ends where the length is greater than the width.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

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combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teaching to do so is found in the reference themselves as well as in the knowledge generally available to one of ordinary skill in the art. Indeed, making a level and planar surface on supports made of weaved wires via bends are conventional and well-known. It has the well-known advantage of providing a desired flat surface in a meshed wire supporting frame which simulate supports made of expensive flat panels to eliminate tilting or obvious distortion of the article if mounted on irregular surface. Hatch demonstrate such desire to make meshed wire frames with flat support surface. The previously cited prior art devices of Lin's two references also show such old and well-known advantage of providing bends in a mesh wire for receiving crosswise wires for providing a flat supporting surface.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Korie H. Chan whose telephone number is 571-272-6816. The examiner can normally be reached on Monday - Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on 571-272-6815. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Korie H. Chan
Primary Examiner
Art Unit 3632

khc
May 26, 2005